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HOUSE BILL NO. 272

Originated in House  Clerk

HOUSE BILL NO. 272

AN ACT TO AMEND SECTIONS 97-19-55, 97-19-57, 97-19-61, 97-19-62, 97-19-63, 97-19-65, 97-19-67 AND 97-19-69, MISSISSIPPI CODE OF 1972, TO INCLUDE ELECTRONICALLY CONVERTED CHECKS AND ELECTRONIC COMMERCIAL DEBITS IN THE BAD CHECK LAW; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 97-19-55, Mississippi Code of 1972, is amended as follows:

97-19-55. (1) It shall be unlawful for any person with fraudulent intent:

(a) To make, draw, issue, utter * * *, deliver, or authorize any check, draft * * *, electronically converted check, or electronic commercial debit to obtain money, delivery of other valuable property, services, the use of property or credit extended by any licensed gaming establishment drawn on any real or fictitious bank, corporation, firm or person, knowing at the time of making, drawing, issuing, uttering or delivering said check, draft * * * order, electronically converted check, or electronic commercial debit that the maker * * *, drawer or payor has not

sufficient funds in or on deposit with such bank, corporation, firm or person for the payment of such check, draft * * *, order, electronically converted check, or electronic commercial debit in full, and all other checks, drafts or orders, or electronic fund transfers upon such funds then outstanding;

(b) To close an account without leaving sufficient funds to cover all outstanding checks, electronically converted check, or electronic commercial debit written or authorized on such account.

(2) For purposes of Sections 97-19-55 through 97-19-69:

(a) "Check" includes a casino marker issued to any licensed gaming establishment.

(b) "Credit" means an arrangement or understanding with a bank, corporation, firm or person for the payment of a check or other instrument.

(c) "Electronically converted check" means a single entry electronic debit transaction initiated with a check and cleared through the ACH Network as an Accounts Receivable Entry, a Point of Purchase Entry, or a Back Office Conversion Entry.

(d) "Electronic commercial debit" means an electronic debit transaction initiated through the ACH Network by a person for commercial, and not consumer, purposes whereby (i) the payor has signed an agreement to pay the payee for goods or services provided, (ii) as part of that agreement and as a condition thereof the payor provides the payee its bank and account

information for the purposes of initiating such a debit in payment for the service or goods provided, (iii) the payee delivers such goods or services to the payor in reliance upon the agreement and the payor's debit authorization, and (iv) the payee initiates such a debit for such purposes. This definition does not include a consumer transaction governed by the Federal Electronic Fund Transfer Act (15 USC Section 1693, et seq.) and its implementing Regulation E (12 CFR Part 205) or a credit transaction governed by Section 75-4A-101 et seq., Mississippi Code of 1972.

(e) "Payor" means the party making payment through the referenced transaction.

(f) "Payee" means the party receiving payment through the referenced transaction.

(g) "Payor bank" is the bank on whom the payor's funds are drawn for the purposes of making payment through the referenced transaction.

(h) "Payee bank" is the bank through which payee is collecting funds for deposit into the payee's account by using the referenced transaction.

SECTION 2. Section 97-19-57, Mississippi Code of 1972, is amended as follows:

97-19-57. (1) As against the maker * * *, drawer or payor thereof, the making, drawing, issuing, uttering * * *, delivering, or initiation of a check, draft * * *, order, electronically converted check, or electronic commercial debit payment of which

is refused by the drawee, shall be prima facie evidence and create a presumption of intent to defraud and of knowledge of insufficient funds in, or on deposit with, such bank, corporation, firm or person, provided such maker * * *, drawer or payor shall not have paid the holder or payee thereof the amount due thereon, together with a service charge of Forty Dollars (\$40.00), within fifteen (15) days after receiving notice that such check, draft * * *, order, electronically converted check, or electronic commercial debit has not been paid by the drawee or payor's bank.

(2) For purposes of Section 11-7-12, the form of the notice provided for in subsection (1) of this section for a check, draft, order, or electronically converted check shall be sent by regular mail and shall be substantially as follows: "This statutory notice is provided pursuant to Section 97-19-57, Mississippi Code of 1972. You are hereby notified that a check, draft * * *, order, or electronically converted check numbered _____, apparently issued by you on _____ (date), drawn upon _____ (name of bank), and payable to _____, has been dishonored. Pursuant to Mississippi law, you have fifteen (15) days from receipt of this notice to tender payment of the full amount of such check, draft or order, or electronically converted check plus a service charge of Forty Dollars (\$40.00), the total amount due being \$_____. Failure to pay this amount in full within the time specified above shall be prima facie evidence of and create a presumption of both

the intent to defraud and the knowledge of insufficient funds in, or on deposit with, such bank in violation of Section 97-19-55."

(3) For purposes of Section 97-19-67, the form of the notice provided for in subsection (1) of this section for a check, draft, order, or electronically converted check shall be sent by regular mail, supported by an affidavit of service by mailing, and shall be substantially as follows: "This statutory notice is provided pursuant to Section 97-19-57, Mississippi Code of 1972. You are hereby notified that a check, draft * * *, order, or electronically converted check numbered _____, apparently issued by you on _____ (date), drawn upon _____ (name of bank), and payable to _____, has been dishonored. Pursuant to Mississippi law, you have fifteen (15) days from receipt of this notice to tender payment of the full amount of such check, draft or order, or electronically converted check plus a service charge of Forty Dollars (\$40.00), the total amount due being \$_____. Unless this amount is paid in full within the time specified above, the holder may assume that you delivered the instrument with intent to defraud and may turn over the dishonored instrument and all other available information relating to this incident to the proper authorities for criminal prosecution."

(4) For purposes of Sections 11-7-12 and 97-19-67, the form of notice provided for in subsection (1) of this section for an electronic commercial debit shall be sent by regular mail, supported by an affidavit of service by mailing, and shall be

substantially as follows: "This statutory notice is provided pursuant to Section 97-19-57, Mississippi Code of 1972. You are hereby notified that on (date) an electronic commercial debit was initiated by (name of payee bank) on behalf of (payee) to (name of payor bank) through the ACH Network requesting a payment in the amount of \$ to (payee) from your account pursuant to invoice number and our agreement dated , but that payment has been dishonored. Pursuant to Mississippi law, because the payee delivered (goods or service) to you in reliance upon the agreement, you have fifteen (15) days from receipt of this notice to tender payment of the full amount of such electronic commercial debit plus a service charge of Forty Dollars (\$40.00), the total amount due being \$. Failure to pay this amount in full within the time specified above shall be prima facie evidence of and create a presumption of both the intent to defraud and the knowledge of insufficient funds in, or on deposit with, such bank in violation of Section 97-19-55, and the payee may assume that you entered into such agreement with intent to defraud and may turn over all documentation related to the dishonored electronic commercial debit to the proper authorities for criminal prosecution."

(* * *5) If any notice is returned undelivered to the sender after such notice was mailed to the address printed on the check, draft or order, or to the address given by the accused at

the time of issuance of the instrument, such return shall be prima facie evidence of the maker's or drawer's intent to defraud.

(* * *6) Affidavit of service by mail shall be adequate if made in substantially the following form:

"STATE OF _____

COUNTY OF _____

_____, being first duly sworn on oath, deposes and states that he/she is at least eighteen (18) years of age and that on (date)_____, 2____, he/she served the attached Notice of Dishonor by placing a true and correct copy thereof securely enclosed in an envelope addressed as follows:

and deposited the same, postage prepaid, in the United States mail at _____.

(signature)

Subscribed to and sworn before me, this the _____ day of _____, 2____.

(Notary Public)

My commission expires:

(SEAL) "

(* * *7) Without in any way limiting the provisions of this section, this section shall apply to a draft for the payment of money given for a motor vehicle even if such payment is conditioned upon delivery of documents necessary for transfer of a valid title to the purchaser.

SECTION 3. Section 97-19-61, Mississippi Code of 1972, is amended as follows:

97-19-61. Such notice as is provided for in Section 97-19-57 is dispensed with: (a) in the event the situs of the drawee is not in the State of Mississippi; (b) if the drawer or payor is not a resident of the State of Mississippi or has left the State of Mississippi at the time such check, draft * * *, order, electronically converted check, or electronic commercial debit is dishonored; or (c) if the drawer or payor of such check, draft * * *, order, electronically converted check, or electronic commercial debit did not have an account with the drawee or payor bank of such check, draft * * *, order, electronically converted check, or electronic commercial debit at the time the same was issued or dishonored, or payment of the * * * same is denied because the account was closed at the time the check, draft * * *, order, or electronically converted check, or electronic commercial debit was issued or dishonored.

SECTION 4. Section 97-19-62, Mississippi Code of 1972, is amended as follows:

97-19-62. (1) In any prosecution or action under the provisions of Section 97-19-55, a check, draft * * *, order, or electronically converted check for which the information required in subsections (2) and (3) of this section is available at the time of issuance, utterance or delivery shall constitute prima facie evidence of the identity of the party issuing, uttering or delivering the check, draft * * *, order, or electronically converted check and that such person was a party authorized to draw upon the named account.

(2) To establish prima facie evidence of the identity of the party presenting such check, draft * * *, order, or electronically converted check, the following information regarding such identity shall be requested by the party receiving such instrument: The presenter's name, residence address and home phone number. Such information may be provided in the following manner:

(a) The information may be recorded upon the check, draft or order, or electronically converted check itself; or

(b) The number of a check-cashing identification card issued by the receiving party may be recorded on the check, draft * * *, order, or electronically converted check. Such check-cashing identification card shall be issued only after the information required in this subsection has been placed on file by the receiving party.

(3) In addition to the information required in subsection (2) of this section, the party receiving the check, draft * * *,

order, or electronically converted check shall witness the signature or endorsement of the party presenting such instrument and, as evidence of such, the receiving party shall initial the instrument.

(4) In any prosecution or action under the provisions of Section 97-19-55 for an electronic commercial debit, the following shall constitute prima facie evidence that the payee was a party authorized to draw upon the named account for the electronic commercial debit: (i) the existence of an enforceable written agreement between the payor and the payee whereby the payee agrees to provide a good or service to the payor conditioned and in reliance upon the payor's provision of its account and bank information and agreement to pay for the good or service through an electronic commercial debit, and (ii) an invoice, bill of lading, or other business record evidencing the delivery of the good or service by the payee to the payor.

SECTION 5. Section 97-19-63, Mississippi Code of 1972, is amended as follows:

97-19-63. (1) It shall be the duty of the drawee of any check, draft or other order for the payment of money, before refusing to pay the same to the holder thereof upon presentation, to cause to be written, printed, or stamped in plain language thereon or attached thereto, the reason for drawee's dishonor or refusal of the same. In all prosecutions under Sections 97-19-55 through 97-19-69, the introduction in evidence of any unpaid and

dishonored check, draft or other order for the payment of money, having the drawee's refusal to pay stamped or written thereon or attached thereto, with the reason therefor as aforesaid, shall be prima facie evidence of the making or uttering of said check, draft or other order for the payment of money and the dishonor thereof, and that the same was properly dishonored for the reasons written, stamped or attached by the drawee on such dishonored check, draft or other such order for the payment of money.

(2) It shall be the duty of the drawee or the payor's bank in an electronically converted check or electronic commercial debit transaction, before refusing to pay the same to the payee's bank and the payee thereof upon initiation of such a transaction through the ACH Network, to provide such notice for the reason for dishonor or refusal of the same by the payor's bank as would be required by the NACHA Operating Rules & Guidelines for the reasons of insufficient funds, account closed, no account or unable to locate account, payment stopped, or uncollected funds. In all prosecutions under Sections 97-19-55 through 97-19-69, the introduction in evidence of any such notice of an unpaid and dishonored electronically converted check or electronic commercial debit properly given under the NACHA rules with the reason of insufficient funds, account closed, no account or unable to locate account, payment stopped, or uncollected funds shall be prima facie evidence of the dishonor of said electronically converted

check or electronic commercial debit for the reasons recorded and noticed pursuant to the NACHA Operating Rules & Guidelines.

(3) In the case of an electronically converted check, the introduction into evidence of a check payable to the payee and signed by the drawer to authorize the transaction is prima facie evidence of the making or uttering of said electronically converted check for the payment of money.

SECTION 6. Section 97-19-65, Mississippi Code of 1972, is amended as follows:

97-19-65. Each making, drawing, issuing, uttering * * *,
delivering, or initiation of any such check, draft * * *, order,
electronically converted check, or electronic commercial debit as
aforesaid shall constitute a separate offense.

SECTION 7. Section 97-19-67, Mississippi Code of 1972, is amended as follows:

97-19-67. (1) Except as may be otherwise provided by subsection (2) of this section, any person violating Section 97-19-55, upon conviction, shall be punished as follows:

(a) For the first offense of violating said section, where the check, draft * * *, order, electronically converted check, or electronic commercial debit involved be less than One Hundred Dollars (\$100.00), the person committing such offense shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Twenty-five Dollars (\$25.00), nor more than Five Hundred Dollars (\$500.00), or by imprisonment

in the county jail for a term of not less than five (5) days nor more than six (6) months, or by both such fine and imprisonment, in the discretion of the court * * *.

(b) Upon commission of a second offense of violating said section, where the check, draft * * *, order, electronically converted check, or electronic commercial debit involved is less than One Hundred Dollars (\$100.00), the person committing such offense shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Fifty Dollars (\$50.00) nor more than One Thousand Dollars (\$1,000.00), or by imprisonment in the county jail for a term of not less than thirty (30) days nor more than one (1) year, or by both such fine and imprisonment, in the discretion of the court * * *.

(c) Upon commission of a third or any subsequent offense of violating said section, regardless of the amount of the check, draft * * *, order, electronically converted check, or electronic commercial debit involved, and regardless of the amount of the checks, drafts or orders involved in the prior convictions, the person committing such offense shall be guilty of a felony and, upon conviction, shall be punished by imprisonment in the State Penitentiary for a term of not less than one (1) nor more than five (5) years.

(d) Where the check, draft * * *, order, electronically converted check, or electronic commercial debit involved shall be One Hundred Dollars (\$100.00) or more, the person committing such

offense, whether same be a first or second offense, shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), or by imprisonment in the State Penitentiary for a term of not more than three (3) years, or by both such fine and imprisonment, in the discretion of the court. Upon conviction of a third or any subsequent offense, the person convicted shall be punished as is provided in the immediately preceding paragraph hereof.

(2) Where the conviction was based on a worthless check, draft * * *, order, or electronically converted check given for the purpose of satisfying a preexisting debt or making a payment or payments on a past-due account or accounts, no imprisonment shall be ordered as punishment, but the court may order the convicted person to pay a fine of up to the applicable amounts prescribed in * * * subsection (1)(a)(b) and (d) of this section * * *; provided, however, that an electronic commercial debit initiated following the delivery of goods or services that were provided in reliance upon the agreement for payment through that means shall not be considered payment for a preexisting debt or a past-due account or accounts for the purposes of this section.

(3) In addition to or in lieu of any penalty imposed under the provisions of subsection (1) or subsection (2) of this section, the court may, in its discretion, order any person

convicted of violating Section 97-19-55 to make restitution in accordance with the provisions of Sections 99-37-1 through 99-37-23 to the holder or payee of any check, draft * * *, order, electronically converted check, or electronic commercial debit for which payment has been refused.

(4) Upon conviction of any person for a violation of Section 97-19-55, when the prosecution of such person was commenced by the filing of a complaint with the court by the district attorney under the provisions of Section 97-19-79, the court shall, in addition to any other fine, fee, cost or penalty which may be imposed under this section or as otherwise provided by law, and in addition to any order as the court may enter under subsection (3) of this section requiring the offender to pay restitution under Sections 99-37-1 through 99-37-23, impose a fee in the amount up to eighty-five percent (85%) of the face amount of the check, draft * * *, order, electronically converted check, or electronic commercial debit for which the offender was convicted of drawing, making, issuing, uttering * * *, delivering or authorizing in violation of Section 97-19-55.

(5) It shall be the duty of the clerk or judicial officer of the court collecting the fees imposed under subsection (4) of this section to monthly deposit all such fees so collected with the State Treasurer, either directly or by other appropriate procedures, for deposit in the special fund of the State Treasury

created under Section 99-19-32, known as the "Criminal Justice Fund."

(6) After the accused has complied with all terms of the statute and the complainant or victim has been paid, the district attorney's check unit may dispose of the accused's file after one (1) year has expired after the last audit.

SECTION 8. Section 97-19-69, Mississippi Code of 1972, is amended as follows:


97-19-69. In the event of the existence of prima facie evidence of fraudulent intent as defined in Section 97-19-57 and the giving of notice under Section 97-19-57, if required, any person, firm or corporation causing the arrest of the drawer of such check, draft * * *, order, electronically converted check, or electronic commercial debit shall not be criminally or civilly liable for false arrest or false imprisonment.

SECTION 9. This act shall take effect and be in force from and after July 1, 2015.

PASSED BY THE HOUSE OF REPRESENTATIVES
February 12, 2015


SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 5, 2015


PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR


GOVERNOR

3/13/15
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